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Synthes Sales, Inc.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FRANCES WEBB, an individual,
Plaintiff,

vs.

SYNTHES USA SALES, LLC, a
Delaware Limited Liability Company;
DEPUY SYNTHES SALES, INC., a
Massachusetts Corporation; and DOES I-
X inclusive,
Defendant.

Case No. 3:20-cv-00196-MMD-WGC

PROTECTIVE ORDER

The Court recognizes that documents and information (“Materials” as
defined in this order) being sought through discovery in this action are considered

1 confidential by the parties. The parties have agreed to be bound by the terms of
2 this Protective Order (“Order”) in this action to facilitate document production and
3 disclosure, and to protect the respective interests of the parties in their confidential
4 information. This Order shall remain in effect unless modified pursuant to the
5 terms contained in this Order.

6 Accordingly, IT IS ORDERED that the parties’ stipulation is granted
7 and the following provisions shall be enforced:

8 **DEFINITIONS**

9 The following Definitions shall apply in this Order:

10 A. The term “Confidential Information” will mean and include
11 information contained or disclosed in any materials, including documents, portions
12 of documents, answers to interrogatories, responses to requests for admissions, trial
13 testimony, deposition testimony, and transcripts of trial testimony and depositions,
14 including data, summaries, and compilations derived therefrom that is deemed to
15 be Confidential Information by any party to which it belongs.

16 B. The term “Materials” will include, but is not be limited to:
17 documents; correspondence; memoranda; financial information; email;
18 specifications; marketing plans; marketing budgets; customer information;
19 materials that identify customers or potential customers; price lists or schedules or
20 other matter identifying pricing; minutes; letters; statements; cancelled checks;
21 contracts; invoices; drafts; books of account; worksheets; forecasts; notes of
22 conversations; desk diaries; appointment books; expense accounts; recordings;
23 photographs; motion pictures; sketches; drawings; notes of discussions with third
24 parties; other notes; business reports; instructions; disclosures; other writings;

1 records of website development; certain medical records and related information;
2 and internet archives.

3 C. The term “**Counsel**” will mean all counsel of record throughout
4 the litigation, including outside counsel of record, and other attorneys, paralegals,
5 secretaries, and support staff employed in the office of any counsel of record.

6 **PROTECTIVE ORDER**

7 The following provisions shall apply in this litigation:

8 1. Each party to this litigation that produces or discloses any
9 Materials, answers to interrogatories, responses to requests for admission, trial
10 testimony, deposition testimony, and transcripts of trial testimony and depositions,
11 or information that the producing party believes should be subject to this Protective
12 Order may designate the same as “CONFIDENTIAL” or “CONFIDENTIAL—
13 FOR COUNSEL ONLY.”

14 (a) Designation as “CONFIDENTIAL”: Any party may
15 designate information as “CONFIDENTIAL” only if, in the good faith belief of
16 such party and its Counsel, the unrestricted disclosure of such information could be
17 harmful to the business or operations of such party, or discloses the personal health
18 information of Plaintiff or others.

19 (b) Designation as “CONFIDENTIAL—FOR COUNSEL
20 ONLY”: Any party may designate information as “CONFIDENTIAL—FOR
21 COUNSEL ONLY” only if, in the good faith belief of such party and its Counsel,
22 the information is among that considered to be most sensitive by the party,
23 including but not limited to trade secret or other confidential research,
24 development, financial, customer related data or other commercial information.

1 2. In the event the producing party elects to produce Materials for
2 inspection, no marking need be made by the producing party in advance of the
3 initial inspection. For purposes of the initial inspection, all Materials produced
4 will be considered as “CONFIDENTIAL—FOR COUNSEL ONLY,” and must be
5 treated as such pursuant to the terms of this Order. Thereafter, upon selection of
6 specified Materials for copying by the inspecting party, the producing party must,
7 within a reasonable time prior to producing those Materials to the inspecting party,
8 mark the copies of those Materials that contain Confidential Information with the
9 appropriate confidentiality marking.

10 3. Whenever a deposition taken on behalf of any party involves
11 the disclosure of Confidential Information of any party:

12 (a) the deposition or portions of the deposition must be
13 designated as containing Confidential Information subject to the provisions of this
14 Order; such designation must be made on the record whenever possible, but a party
15 may designate portions of depositions as containing Confidential Information after
16 transcription of the proceedings; a party will have until 30 days after receipt of the
17 deposition transcript to inform the other party or parties to the action of the
18 portions of the transcript to be designated “CONFIDENTIAL” or
19 “CONFIDENTIAL – FOR COUNSEL ONLY.”

20 (b) the disclosing party will have the right to exclude from
21 attendance at the deposition, during such time as the Confidential Information is to
22 be disclosed, any person other than the deponent, Counsel (including their staff and
23 associates), the court reporter, and the person(s) agreed upon pursuant to paragraph
24 8, below; and

1 (c) The originals of the deposition transcripts and all copies
2 of the deposition must bear the legend “CONFIDENTIAL” or
3 “CONFIDENTIAL—FOR COUNSEL ONLY,” as appropriate, and the original or
4 any copy ultimately presented to a court for filing must not be filed unless it can be
5 accomplished under seal, identified as being subject to this Order, and protected
6 from being opened except by order of this Court.

7 4. All Confidential Information designated as “CONFIDENTIAL”
8 or “CONFIDENTIAL—FOR COUNSEL ONLY” must not be disclosed by the
9 receiving party to anyone other than those persons designated within this Order
10 and must be handled in the manner set forth below, and in any event, must not be
11 used for any purpose other than in connection with this litigation, unless and until
12 such designation is removed either by agreement of the parties, or by order of the
13 Court.

14 5. Information designated “CONFIDENTIAL—FOR COUNSEL
15 ONLY” may be viewed only by:

16 (a) Counsel (as defined in paragraph C, above) of the
17 receiving party;

18 (b) Independent experts and stenographic and clerical
19 employees associated with such experts. Prior to receiving any Confidential
20 Information of the producing party, the expert must execute a copy of the
21 “Agreement to Be Bound by Stipulated Protective Order,” attached hereto as
22 Exhibit A. Counsel for the receiving party must retain executed copies of such
23 exhibits;

1 (c) The Court and any Court staff and administrative
2 personnel;

3 (d) Any court reporter employed in this litigation and acting
4 in that capacity; and

5 (e) Any person indicated on the face of the document to be
6 its author or co-author, or any person identified on the face of the document as one
7 to whom a copy of such document was sent before its production in this action.

8 6. Information designated “CONFIDENTIAL” may be viewed
9 only by the individuals listed in paragraph 5, above, and by the additional
10 individuals listed below:

11 (a) Party principals or executives who are required to
12 participate in policy decisions with reference to this action;

13 (b) Technical personnel of the parties with whom Counsel
14 for the parties find it necessary to consult, in the discretion of such Counsel, in
15 preparation for trial of this action; and

16 (c) Stenographic and clerical employees associated with the
17 individuals identified above.

18 7. All information that has been designated as
19 “CONFIDENTIAL—COUNSEL ONLY” by the producing or disclosing party,
20 and any and all reproductions of that information, must be retained in the custody
21 of the Counsel for the receiving party, except that independent experts authorized
22 to view such information under the terms of this Order may retain custody of
23 copies such as are necessary for their participation in this litigation, but only during
24 the course of this litigation. The principals, employees or other agents of the

1 parties who received information prior to and apart from this litigation that was
2 subsequently disclosed in this litigation as being either “CONFIDENTIAL” or
3 “CONFIDENTIAL—FOR COUNSEL ONLY” may also retain copies of that
4 information as is necessary for use in their respective businesses.

5 8. Before any Materials produced in discovery, answers to
6 interrogatories, responses to requests for admissions, deposition transcripts, or
7 other documents which are designated as Confidential Information are filed with
8 the Court for any purpose, the party seeking to file such material must seek
9 permission of the Court to file the material under seal. The parties must follow the
10 procedural requirements of LR IA 10-5 and the requirements of *Kamakana v. City*
11 *and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006). Nothing in this order
12 shall be construed as automatically permitting a party to file under seal. The party
13 seeking leave of Court shall show “compelling reasons” (where the motion is more
14 than tangentially related to the merits of the case) or “good cause” for filing under
15 seal. *See Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1101 (9th Cir.
16 2016). Additionally, such party seeking to file under seal shall, within the
17 applicable deadline, file a redacted, unsealed version of any motion, response or
18 reply if such party is waiting for a ruling from the Court on filing an unredacted,
19 sealed version of the same document. Further, no portion of the trial of the matter
20 shall be conducted under seal.

21 9. Confidential Information and Materials designated
22 “CONFIDENTIAL” or “CONFIDENTIAL—FOR COUNSEL ONLY” shall be
23 used solely for the prosecution or defense of this action. A party who wishes to
24 use Confidential Information and/or Materials designated “CONFIDENTIAL” or

1 “CONFIDENTIAL—FOR COUNSEL ONLY” for a purpose other than the
2 prosecution or defense of this action must request permission, in writing, from
3 Counsel for the producing party. The receiving party’s request must identify the
4 Confidential Information and/or Materials designated “CONFIDENTIAL” or
5 “CONFIDENTIAL—FOR COUNSEL ONLY” that the receiving party wishes to
6 use, and identify the purpose for which it wishes to use Confidential Information
7 and/or Materials designated “CONFIDENTIAL” or “CONFIDENTIAL—FOR
8 COUNSEL ONLY.” If the parties cannot resolve the question of whether the
9 receiving party can use Confidential Information and/or Materials designated
10 “CONFIDENTIAL” or “CONFIDENTIAL—FOR COUNSEL ONLY” for a
11 purpose other than the prosecution or defense of this action within 14 days of the
12 producing party’s receipt of such a request, the receiving party may move the
13 Court for a ruling on the receiving party’s request. In the event any party files a
14 motion seeking to use Confidential Information and/or Materials designated
15 “CONFIDENTIAL” or “CONFIDENTIAL—FOR COUNSEL ONLY” for a
16 purpose other than the prosecution or defense of this action, the Confidential
17 Information and/or Materials designated “CONFIDENTIAL” or
18 “CONFIDENTIAL—FOR COUNSEL ONLY” shall be submitted to the Court,
19 under seal, for an in-camera inspection. Any Confidential Information and/or
20 Materials designated “CONFIDENTIAL” or “CONFIDENTIAL—FOR
21 COUNSEL ONLY” at issue must be treated as Confidential Information, as
22 designated by the producing party, until the Court has ruled on the motion or the
23 matter has been otherwise resolved.

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1 10. At any stage of these proceedings, any party may object to a
2 designation of Materials as Confidential Information. The party objecting to
3 confidentiality must notify, in writing, Counsel for the producing party of the
4 objected-to Materials and the grounds for the objection. If the dispute is not
5 resolved consensually between the parties within 14 days of receipt of such a
6 notice of objections, the objecting party may move the Court for a ruling on the
7 objection. In the event any party files a motion challenging the designation or
8 redaction of information, the document shall be submitted to the Court, under seal,
9 for an in-camera inspection. The Materials at issue must be treated as Confidential
10 Information, as designated by the producing party, until the Court has ruled on the
11 objection or the matter has been otherwise resolved.

12 11. At any stage of these proceedings, any party may request that it
13 be permitted to disclose Materials designated as Confidential Information to
14 individuals not permitted by this Order to view such Materials. The party must
15 notify, in writing, Counsel for the producing party of the identity of the relevant
16 Materials and the individuals to whom the party wishes to disclose the Materials. If
17 the request is not resolved consensually between the parties within 14 days of
18 receipt of such a request, the requesting party may move the Court for a ruling
19 allowing such disclosure. In the event any party files a motion requesting such
20 disclosure, the document shall be submitted to the Court, under seal, for an in-
21 camera inspection. The Materials at issue must be treated as Confidential
22 Information, as designated by the producing party, until the Court has ruled on the
23 request.

1 12. All Confidential Information must be held in confidence by
2 those inspecting or receiving it. To the extent the Confidential Information has not
3 been disclosed prior to and apart from this litigation, it must be used only for
4 purposes of this action. If the Confidential Information was exchanged between
5 the parties prior to and apart from this litigation for purposes of conducting their
6 respective businesses, the parties may continue to use that otherwise Confidential
7 Information for that purpose. The parties may not distribute the Confidential
8 Information beyond those persons or entities that had received the Confidential
9 Information prior to this litigation. In addition, counsel for each party, and each
10 person receiving Confidential Information, must take reasonable precautions to
11 prevent the unauthorized or inadvertent disclosure of such information. If
12 Confidential Information is disclosed to any person other than a person authorized
13 by this Order, the party responsible for the unauthorized disclosure must
14 immediately bring all pertinent facts relating to the unauthorized disclosure to the
15 attention of the other parties and, without prejudice to any rights and remedies of
16 the other parties, make every effort to prevent further disclosure by the party and
17 by the person(s) receiving the unauthorized disclosure.

18 13. No party will be responsible to another party for disclosure of
19 Confidential Information under this Order if the information in question is not
20 labeled or otherwise identified as such in accordance with this Order.

21 14. If a party, through inadvertence, produces any Confidential
22 Information without labeling or marking or otherwise designating it as such in
23 accordance with this Order, the producing party may give written notice to the
24 receiving party that the Materials produced are deemed Confidential Information,

1 and that the Materials produced should be treated as such in accordance with that
2 designation under this Order. The receiving party must treat the Materials as
3 confidential, once the producing party so notifies the receiving party. If the
4 receiving party has disclosed the Materials before receiving the designation, the
5 receiving party must notify the producing party in writing of each such disclosure.
6 Counsel for the parties will agree on a mutually acceptable manner of labeling or
7 marking the inadvertently produced Materials as “CONFIDENTIAL” or
8 “CONFIDENTIAL—FOR COUNSEL ONLY.”

9 15. Nothing within this Order will prejudice the right of any party
10 to object to the production of any discovery material on the grounds that the
11 material is protected as privileged or as attorney work product.

12 16. Nothing in this Order will bar Counsel from rendering advice to
13 their clients with respect to this litigation and, in the course thereof, relying upon
14 any information designated as Confidential Information, provided that the contents
15 of the information must not be disclosed.

16 17. This Order will be without prejudice to the right of any party to
17 oppose production of any information for lack of relevance or any other ground
18 other than the mere presence of Confidential Information. The existence of this
19 Order must not be used by either party as a basis for discovery that is otherwise
20 improper under the Federal Rules of Civil Procedure.

21 18. Information designated Confidential pursuant to this Order also
22 may be disclosed if:

23 (a) the party or non-party making the designation consents to
24 such disclosure;

1 (b) the Court, after notice to all affected persons, allows such
2 disclosure; or

3 (c) the party to whom Confidential Information has been
4 produced thereafter becomes obligated to disclose the information in response to a
5 lawful subpoena, provided that the subpoenaed party gives prompt notice to
6 Counsel for the party which made the designation, and permits Counsel for that
7 party sufficient time to intervene and seek judicial protection from the enforcement
8 of this subpoena and/or entry of an appropriate protective order in the action in
9 which the subpoena was issued.

10 19. Nothing in this Confidentiality Order shall limit any producing
11 party's use of its own documents or shall prevent any producing party from
12 disclosing its own Confidential Information to any person. Such disclosures shall
13 not affect any confidential designation made pursuant to the terms of this Order so
14 long as the disclosure is made in a manner which is reasonably calculated to
15 maintain the confidentiality of the information. Nothing in this Order shall prevent
16 or otherwise restrict Counsel from rendering advice to their clients, and in the
17 course thereof, relying on examination of stamped confidential information.

18 20. Within 30 days of the final termination of this action, including
19 any and all appeals, Counsel for each party must purge all Confidential
20 Information from all machine-readable media on which it resides and must either
21 (a) return all Confidential Information to the party that produced the information,
22 including any copies, excerpts, and summaries of that information, or (b) destroy
23 same. With respect to paper copies, return or destruction of Confidential
24 Information is at the option of the producing party. Notwithstanding the foregoing,

1 Counsel for each party may retain all pleadings, briefs, memoranda, motions, and
2 other documents filed with the Court that refer to or incorporate Confidential
3 Information, and will continue to be bound by this Order with respect to all such
4 retained information, after the conclusion of this litigation. Further, attorney work
5 product Materials that contain Confidential Information need not be destroyed, but,
6 if they are not destroyed, the person in possession of the attorney work product will
7 continue to be bound by this Order with respect to all such retained information,
8 after the conclusion of this litigation.

9 21. The restrictions and obligations set forth within this Order will
10 not apply to any information that:

11 (a) the parties agree should not be designated Confidential
12 Information;

13 (b) the parties agree, or the Court rules, is already public
14 knowledge; or

15 (c) the parties agree, or the Court rules, has become public
16 knowledge other than as a result of disclosure by the receiving party, its
17 employees, or its agents, in violation of this Order.

18 22. Any party may designate as “CONFIDENTIAL” or
19 “CONFIDENTIAL—FOR COUNSEL ONLY” any Materials that were produced
20 during the course of this action without such designation before the effective date
21 of this Order, as follows:

22 (a) Parties to this action may designate such Materials by
23 sending written notice of such designation, accompanied by copies of the
24 designated Materials bearing the appropriate legend of “CONFIDENTIAL” or

1 “CONFIDENTIAL—FOR COUNSEL ONLY” to all other parties in possession or
2 custody of such previously undesignated Materials. Any party receiving such
3 notice and copies of designated Materials pursuant to this subparagraph shall return
4 to the producing party all undesignated copies of such Materials in its custody or
5 possession, or shall affix the appropriate legend to all copies of the designated
6 Materials in its custody or possession.

7 (b) Upon notice of designation pursuant to this paragraph,
8 parties shall also: (i) make no disclosure of such designated Materials or
9 information contained therein except as allowed under this Order; and (ii) take
10 reasonable steps to notify any persons known to have possession of such
11 designated Materials or information of the effect of such designation under this
12 Order.

13 (c) All such designations must be made within 30 days of the
14 date of this Order.

15 23. Transmission by email or facsimile is acceptable for all
16 notification purposes within this Order.

17 24. This Order may be modified by agreement of the parties,
18 subject to approval by the Court.

19 25. The Court may modify the terms and conditions of this Order
20 for good cause, or in the interest of justice, or on its own order at any time in these
21 proceedings.

22 26. After termination of this action, the provisions of this Order
23 shall continue to be binding, except with respect to those documents and
24 information that became a matter of public record. This Court retains and shall

1 have continuing jurisdiction over the parties and recipients of Confidential
2 Information and Materials designated as confidential for enforcement of the
3 provisions of this Order following termination of this litigation.

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9 ORDER

10 Paragraph 26 is modified to reflect that although the parties may agree to be bound by the
confidentiality terms of this Order beyond the conclusion of this lawsuit, the dismissal of this action
will terminate the jurisdiction of this Court.

11 IT IS SO ORDERED.

12 Warren G. Cobb

13 UNITED STATES MAGISTRATE JUDGE

14 DATED: February 8, 2021.
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EXHIBIT A

I, _____, declare and say that:

1. I am employed as _____ by _____.

2. I have read the Stipulated Protective Order (the “Order”) entered in _____ and have received a copy of the Order.

3. I promise that I will use any and all “CONFIDENTIAL” or “CONFIDENTIAL—FOR COUNSEL ONLY” information, as defined in the Order, given to me only in a manner authorized by the Order, and only to assist Counsel in the litigation of this matter.

4. I promise that I will not disclose or discuss such “CONFIDENTIAL” or “CONFIDENTIAL—FOR COUNSEL ONLY” information with anyone other than the persons described in paragraphs 4, 5, and 6 of the Order.

5. I acknowledge that, by signing this agreement, I am subjecting myself to the jurisdiction of the United States District Court for the District of Arizona with respect to the enforcement of the Order.

6. I understand that any disclosure or use of “CONFIDENTIAL” or “CONFIDENTIAL—FOR COUNSEL ONLY” information in any manner contrary to the provisions of the Protective Order may subject me to sanctions for contempt of court.

7. I will return all “CONFIDENTIAL” or “CONFIDENTIAL—FOR COUNSEL ONLY” Materials (as defined in the Order) to the attorney who

1 provided it to me, upon request of that attorney, and I shall not retain any copies of
2 said Materials or any information contained within “Confidential” or
3 “CONFIDENTIAL—FOR COUNSEL ONLY” Materials.

4 I declare under penalty of perjury of the laws of the United States of
5 America that the foregoing is true and correct.

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7 _____
SIGNATURE

8 DATED: _____
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